

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

ADP, LLC

Plaintiff

v.

**UNILOC LUXEMBOURG S.A., and
UNILOC USA, INC.,**

Defendants.

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Case No. 5:19-CV-000015-RWS

**DEFENDANTS' UNOPPOSED MOTION TO
AMEND FIRST AMENDED DOCKET CONTROL ORDER**

Defendants Uniloc USA, Inc. and Uniloc Luxembourg S.A. move the Court to extend by approximately two months the unexpired deadlines in this case, including the trial date. **Plaintiff ADP, LLC does not oppose the requested relief.** There is good cause to amend the schedule, including the trial date, because ADP recently filed a Third Amended Complaint that asserts for the first time fraud-by-nondisclosure claims and a claim for breach of the covenant of good faith and fair dealing, and those new claims were asserted less than 30 days prior to the close of discovery. In accordance with the directive at ¶ (b) on page 5 of the First Amended Docket Control Order (Doc. 68), Defendants respectfully ask the Court to amend that Order as follows:

| Proposed Date | Existing Date | Event |
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| | 3 DAYS after conclusion of Trial | Parties to file Motion to Seal Trial Exhibits , if they wish to seal any highly confidential exhibits. EXHIBITS: See Order below regarding exhibits. |

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| [To be selected by Court] | April 27, 2020 Court designated date – not flexible without good cause - Motion Required | 9:00 a.m. JURY TRIAL before Judge Robert W. Schroeder III, 500 North State Line Avenue, Third Floor, Texarkana, Texas. For planning purposes, parties shall be prepared to start the evidentiary phase of trial immediately following jury selection. |
| [To be selected by Court] | April 20, 2020 Court designated date – not flexible without good cause - Motion Required | 9:00 a.m. JURY SELECTION before Judge Robert W. Schroeder III, 500 North State Line Avenue, Third Floor, Texarkana, Texas. |
| [To be selected by Court] | April 7, 2020 Court designated date – not flexible without good cause - Motion Required | 10:00 a.m. PRETRIAL CONFERENCE before Judge Robert W. Schroeder III, 500 North State Line Avenue, Third Floor, Texarkana, Texas. All pending motions will be heard. Lead trial counsel must attend the pretrial conference. |
| June 2, 2020 | March 31, 2020 | File a Notice of Time Requested for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments. |
| June 2, 2020 | March 31, 2020 | File Responses to Motions <i>in Limine</i>. |
| May 22, 2020 | March 24, 2020 | File Motions <i>in Limine</i> and pretrial objections. The parties are ORDERED to meet and confer to resolve any disputes before filing any motion <i>in limine</i> or objection to pretrial disclosures. |

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| May 22, 2020 | March 24, 2020 | <p>File Joint Final Pretrial Order, Joint Proposed Jury Instructions with citation to authority and Form of the Verdict for jury trials.</p> <p>Parties shall use the pretrial order form on Judge Schroeder's website.</p> <p>Proposed Findings of Fact and Conclusions of Law with citation to authority for issues tried to the bench.</p> |
| May 19, 2020 | March 17, 2020 | Exchange Objections to Rebuttal Deposition Testimony. |
| May 12, 2020 | March 10, 2020 | <p>Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings due.</p> <p>If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice with the Court.</p> |
| May 12, 2020 | March 10, 2020 | <p>Exchange Rebuttal Designations and Objections to Deposition Testimony.</p> <p>For rebuttal designations, cross examination line and page numbers to be included.</p> <p>In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections.</p> |
| April 28, 2020 | February 25, 2020 | <p>Exchange Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List).</p> <p>Video and Stenographic Deposition Designation due. Each party who proposes to offer deposition testimony shall serve a disclosure identifying the line and page numbers to be offered.</p> |

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| April 14, 2020 | February 11, 2020 Court designated date – not flexible without good cause – Motion Required | <p>Any Remaining Dispositive Motions due from all parties and any other motions that may require a hearing (including <i>Daubert</i> motions).</p> <p>Motions shall comply with Local Rule CV-56 and Local Rule CV-7. <u>Motions to extend page limits will only be granted in exceptional circumstances.</u></p> <p>For each motion filed, the moving party SHALL provide the Court with one (1) copy of the completed briefing (opening motion, response, reply, and if applicable, surreply), excluding exhibits, in a three-ring binder appropriately tabbed. All documents shall be double-sided and must include the CM/ECF header. These copies shall be delivered to Judge Schroeder's chambers in Texarkana as soon as briefing has completed.</p> <p>Respond to Amended Pleadings.</p> |
| April 7, 2020 | February 4, 2020 | Parties to Identify Rebuttal Trial Witnesses. |
| March 31, 2020 | January 28, 2020 | <p>Parties to Identify Trial Witnesses; Amend Pleadings.</p> <p>It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline.</p> |
| March 17, 2020 | January 14, 2020 | Discovery Deadline. |
| | December 6, 2019 | Document Production Deadline. |

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| | December 23, 2019 | <p>Parties designate rebuttal expert witnesses, rebuttal expert witness reports due. Refer to Local Rules for required information.</p> <p>If, without agreement, a party serves a supplemental expert report after the rebuttal expert report deadline has passed, the serving party must file notice with the Court stating service has occurred and the reason why a supplemental report is necessary under the circumstances.</p> |
| | November 22, 2019 | <p>Parties with burden of proof designate expert witnesses. Expert witness reports due. Refer to Local Rules for required information.</p> |
| | July 11, 2019 | <p>Defendant shall join additional parties. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties.</p> <p>Defendant shall assert any counterclaims. After this deadline, leave of Court must be obtained to assert any counterclaims.</p> |
| | June 17, 2019 | <p>Mediation</p> <p>Parties are encouraged, but not required, to mediate cases.</p> <p>If the parties agree to mediate, they shall jointly file a motion with a proposed order attached. The motion shall indicate whether the parties agree upon a mediator and shall include a mediation deadline. The parties shall confirm the mediator's availability in light of the proposed deadline. If the parties cannot agree on a mediator, they may request the Court appoint a mediator.</p> <p>If the parties do not agree to mediate, they shall file a notice so indicating.</p> |

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| | June 6, 2019 | Plaintiff shall join additional parties. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties. |
| | 3–5 days | EXPECTED LENGTH OF TRIAL |

A proposed form of Second Amended Docket Control Order, incorporating the proposed changes denoted above, is supplied along with this motion—again, in accordance with the directive at ¶ (b) on page 5 of the existing First Amended Docket Control Order (Doc. 68) and Local Rule CV-7(a). In further support and explanation of their motion, Defendants state:

1. Plaintiff ADP filed this lawsuit less than a year ago, on February 1, 2019. Since that time, the parties have asked the Court for only one minor extension—to postpone for five days the deadline for disclosing rebuttal expert witnesses.

2. Throughout the pendency of the case, the parties have worked diligently to refine the case and to prepare it for trial or for disposition (in whole or in part) by pretrial motion. They have exchanged significant volumes of documents and written discovery and worked through numerous disputes regarding discovery issues. Despite their diligent efforts, the parties need additional time to complete the process of preparing the case for disposition. For example:

a. The parties are in the process of scheduling several depositions—on both coasts—during the month of January, but have been unable to arrange for those depositions before the current discovery deadline, January 14.

b. As the parties apprised the Court late last summer, they have arranged for mediation with the Hon. Jeff Kaplan in Dallas, and they are now focusing on a mediation in February.

3. Further, the parties have not yet been able to get either the pleadings or dispositive motions into final form. Taking advantage of this Court’s generous approach to amendment of pleadings—“It is not necessary to file a Motion for Leave to Amend before the

[January 28, 2020] deadline to amend pleadings,” Docket Control Order (Doc. 39) at 3—Plaintiff ADP has filed four iterations of its Complaint—the original and three amendments. *See* Docs. 1, 58, 65, 74.

a. Defendants moved to dismiss the original Complaint in its entirety. *See* Doc. 20 (filed April 20, 2019).

b. Before the Court could rule on that motion, however, Plaintiff amended (*see* Doc. 58), superseding the original Complaint, dropping two tort claims advanced in that original pleading (while adding a claim for attorney fees), and effectively rendering moot the existing dismissal briefing. So, Defendants again moved to dismiss. *See* Doc. 61 (filed November 26, 2019).

c. But, rather than filing a response to that second motion to dismiss, Plaintiff ADP amended its Complaint yet again. *See* Doc. 65 (filed December 10, 2019).

d. Finally, on the last business day before the Christmas holiday, before Defendants had answered or moved to dismiss the Second Amended Complaint, ADP filed its *Third* Amended Complaint, adding claims that had never before been asserted or addressed in the case. *See* Doc. 74 (filed December 23, 2019). This most recent amendment was filed only about three weeks before the current discovery cutoff of January 14, 2020, with a large portion of that three-week period consumed by the Christmas and New Year’s holidays. This amendment, in particular, left inadequate time for the parties to complete discovery or briefing on any potential motion to dismiss.

Because of ADP’s serial amendments, each of which superseded an existing Complaint and started the pleading and dismissal process over, Defendants have not been called upon to answer Plaintiff’s pleadings, having instead moved to dismiss each time—as they will with respect to ADP’s most recent amendment. Respectfully, the parties need the brief requested extension to allow the pleadings and motions to settle, to conclude discovery, and to pursue mediation before they devote substantial time and resources to beginning final trial preparations.

THEREFORE, Defendants Uniloc USA and Uniloc Luxembourg respectfully request that the Court grant their motion and amend the First Amended Docket Control Order to postpone by about two months each of the remaining deadlines in the case, including the trial date.

Dated: January 3, 2020

Respectfully submitted,

LATHROP GPM LLP

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

The undersigned certifies that between December 30, 2019 and January 2, 2020, he conferred in a series of emails with William McCabe, counsel for Plaintiff, regarding Defendants' foregoing request to amend the First Amended Docket Control Order, extending by about two months the unexpired deadlines in that Order, including the trial date. Counsel for Plaintiff stated that **Plaintiff does not oppose the Motion or the requested relief.**

/s/ Dean C. Eyler

Dean C. Eyler